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AFTERNOON SESSION

Friday, April 24, 1908

The Society reassembled at 3.30 o'clock p. m., pursuant to adjournment, the Hon. Oscar S. Straus, Secretary of Commerce and Labor, in the chair.

ADDRESS OF MR. OSCAR S. STRAUS, OF WASHINGTON, D. C.

Gentlemen: The subject for this afternoon, as you will observe from the program, is "How far should loans raised in neutral nations for the use of belligerents be considered a violation of neutrality?"

The subject of loans in time of war is one that I had occasion to bring forward at the last meeting, and on several occasions before and since then in connection with the peace conferences that have been held throughout the country. It has always appeared to me as an inconsistency, in view of the development of the materials of warfare in modern times, that neutral nations, which are inhibited by the principles of international law from supplying war vessels and the muniments of war to belligerents, are not inhibited from supplying money. A few generations ago the effective instruments of war were entirely personal — that is to say, the soldier who was maintained by the liege lord, and was ready for fighting at all times, subject to the command of his over-lord, to whom he looked for protection, and there was very little use, in the larger sense, for money.

The principles of international law, which were so learnedly outlined this morning by the President of the Society, are derived from precedents that come down to us from conditions of society that are entirely different from those under which we live. These principles have been derived or largely developed, not from international right and justice, but from might and expediency — an expediency that grew out of power, as distinguished from international equity and justice. In other words, the development of international law is

entirely different from the development of municipal law, which has its basis in the equality of the individual before the law.

Many of the so-called principles of international law that have come down to us are not principles at all. They are the fine-spun arguments that legal casuistry has devised to justify and obscure the aggressions that powerful nations have made in defiance of the rights of the weaker. As that law stands at present, developed by the casuistry to which I have referred, the principles of neutral rights and neutral duties derived therefrom are not in consonance but in direct conflict with the enlightened conscience of nations.

We are making progress in substituting principles of right for expediency in the relations of nations, and international law will have to shape itself in accordance with this new spirit which international conscience demands. It is quite well established that in time of war neutral nations, as such, are inhibited from lending money to belligerents, but the subjects of neutral nations, their bankers, can lend and do lend money, and not only loan it, but in order to raise it advertise public loans for the purpose of advancing money to belligerents. This was done in the last war between Russia and Japan. Large Japanese loans were negotiated and obtained publicly in this country and in Great Britain, and Russian loans were advertised and obtained in France and in Germany. Now, everyone knows that money advanced to belligerents signifies the giving to them of means for securing war instruments. Money is the most effective war instrument. It is simply sophistication to hold that a neutral can not loan money to a belligerent without performing an unneutral act and yet permit the subjects of neutral nations to do this. It is in essence a contradiction of international honesty that such should be permitted, yet the international authorities are practically agreed upon such a discrimination. It is a technical but not an honest discrimination. It is not founded upon sincerity. The same may be said in regard to a great many of the principles of international law, and the reason is, they were not derived from either honesty or justice, but purely from might and expediency.

The doctrine of neutral rights is largely predicated upon the protection of commerce, while the principle of neutral duties has been

largely ignored, and yet for the purpose of maintaining international peace neutral duties are far more important than neutral rights.

If the purpose of international law is to safeguard international justice, then those acts which are inhibited as to neutral nations should be equally inhibited as to the citizens or subjects of such neutral nations. To hold a different view must be predicated either upon technicality or upon the theory that such a neutral nation has not the power or ability to control its subjects or citizens, and we know this latter predicate is not true. Every civilized nation has that power, and if it has the power it should be made to exercise it. I know I am not expounding international law as presented by the text writers. My purpose is to point out the principle upon which the international law upon this subject must develop in consonance with the principles of international justice. We of the present day know what neutrality based upon principle means and should be, and it requires only an application of the ordinary sense of right and justice to international relations to make that principle effective.

National boundaries in the sense of national exclusiveness are falling away in our age, due to the rapidity of intercommunication, and to the facility with which people go out from one country and enter another, or, in other words, to the movement of population, to immigration, and to emigration. Last year we received in this country nearly a million and a quarter immigrants who came to us from foreign shores, and about a half that number during the same period have left our country to return to their former homes. Nations are coming nearer and nearer together. We speak of the family of nations. Several generations ago this phrase might have been regarded as a euphemism, but in our day this is truly so — we are a family of nations, and the family ties are made closer and closer by the movement to and fro of population. Our missionary societies spend millions in sending missionaries to foreign countries in order to spread the ideals of American Christianity in Oriental lands. This vast number of immigrants and emigrants to and from our country and other countries are in the very nature of things voluntary missionaries who carry the best in the civilization of their respective nations from one country to the other. They do more than

this; they stimulate international trade, and promote international relations. This movement of population was made possible to a considerable degree by reason of the doctrine of expatriation as distinguished from perpetual allegiance, which our Government from its very beginning has steadfastly upheld and insisted upon, so that with very few exceptions it is accepted by the leading nations of the world. The result has been, and will be more and more, to facilitate intercommunication, and to necessitate a revision not only of neutral rights and of neutral duties, but of many of the principles of international law as affecting the relations of nations.

Some phases of this general subject have been already brought forward in the former and in the recent Hague Conference, and I trust when the next conference assembles the subject of neutral rights and duties will receive direct attention and will be reexamined with the view of bringing them in consonance with the growing spirit of international right and justice, which is making such rapid advances among the enlightened people of the various nations of the world, due in no small degree to the peace movement, and to societies such as this, devoted to the elucidation and study of the law of nations.

I now have the pleasure of introducing to this audience Prof. Paul S. Reinsch, of the University of Wisconsin.

ADDRESS OF MR. PAUL S. REINSCH,

OF MADISON, WIS.

Mr. Chairman, Ladies, and Gentlemen: It is the privilege of students of international law to devote their attention not only to an analytical study of practices and rules already in full operation and force, but also to those principles which, through their intimate connection with the growing interests of our common humanity, promise to acquire increasing authority in the future. Thus, we not only consider the rigid and stern precedent of legal action, but also the promise of a day when humanity will cast its laws in still nobler forms and will adjust them to a broader view of life. As international law rests in the last analysis on a strong and enlightened public opinion, the publicist dealing with that science should not

neglect the powerful currents of ethical feeling which manifest themselves among the populations of civilized states. He should consider the inevitable tendencies of public opinion on these matters, as well as the broader connection of legal rules with advancing civilization. In the field of international law, the idea of Kant is realized; every man becomes a king and legislator, and every man, in turn, should realize that upon his rational and responsible sense of justice international law is founded. It is for this reason perhaps that the committee has selected a subject like the present one, which thus far belongs rather to the field of international ethics than to that of positive international law. But we must not suppose that a direct scientific interest is lacking in a subject of this nature. Who would praise the physicist for confining his attention to the laws already ascertained, and for treating the direct conversion of energy in coal, or the problem of aërial navigation, as fit only for fantastic and trifling minds. Even so it would be short-sighted to consign to a platonic Utopia problems like the present one, though their definite solution may lie in the distant future.

The question of war loans raised in neutral countries has been given some prominence on account of the practices during the Russo-Japanese war. The manner in which both combatants were dependent upon the credit of institutions in neutral countries made plain to all beholders the direct relation between external financial support and war power. As a result it has been urged in many quarters that the raising of war loans in neutral countries should be interdicted in the interests of general peace.

In his memorial prepared before the Second Hague Conference convened, Sir Thomas Barclay included a section to the following effect:

> The duties of a neutral state are (*d*) to forbid the raising within its jurisdiction of loans by public subscription for the benefit of either belligerent.

The fifteenth as well as the sixteenth International Peace Congresses (the latter in Munich, 1906) passed resolutions in a similar sense. All this gives the question a certain actuality at the present time.

The recent development of international law points in general toward a stricter interpretation of the duties of neutrals in time of war. In this matter, as is well known, the greatest individual advances are due to the policy of the United States, especially in connection with foreign enlistment and the equipment of men-of-war. It is true, the general principle of neutral responsibility may still be stated in the following language (used by the International Law Institute in 1875):

The mere fact of a hostile act being committed on its territory is not sufficient to render a neutral state responsible, but it must be shown that there existed either a hostile intention [*dolus*], or manifest negligence [*culpa*].

Yet we have developed stricter ideas both as to what constitutes a hostile act and what degree of diligence is required on the part of a neutral state. The general point of view at present is that the struggle of war should be restricted as far as possible to the combatants, and that there should be no sort of subsidy or maintenance on the part of outsiders. As was the case in the olden times of the common law, maintenance and champerty usually go together. The nation that assists a belligerent hopes itself to profit thereby politically. And neither action is in the interest of the world community, because the justice of the cause may thus be overshadowed by mere economic influence.

Turning, now, to our present problem we may take as our perspective the question whether war loans are a hostile act on the part of a neutral state, and whether as a matter of fact such operations could be prevented by due diligence on the part of the neutral government. No argument is required to show that war loans constitute a most potent assistance to a belligerent power. Relying totally upon its own ready resources, many a belligerent would have hesitated to venture upon the fortunes of war. In other cases, again, the cessation of hostilities has been clearly traceable to the exhaustion or closure of foreign sources of money supplies. In the eyes of many authorities this fact has been sufficient to condemn the use of neutral markets for war loans as an act not in harmony with the principles of neutrality. War, if justifiable at all, ought to be a fair test of

national strength. Whatever moral character as a furnace of righteousness it may have, is destroyed when either or both belligerents are sustained by financial support from without. The sense of fairness is outraged when we see such support given by countries which under a juster system would be bound to maintain an attitude of substantial impartiality. The practice, moreover, makes it possible for a rich nation virtually to engage an international mercenary to fight its battles. Itself maintaining a correct attitude of strict neutrality, it may nevertheless have its own interests defended by some other nation to whom it furnishes the sinews of war. That a nation should thus be able to cause war by its financial policy, but should at the same time escape all responsibility and all the direct burdens of suffering incident to such calamity, may in the future prove a serious menace to the peace of the world. The possibilities for diplomatic finesse thus presented, the danger of having human lives and the somber issues of peace and war dealt with in the spirit of financial calculation, are not entirely vain imaginings.

We may also note certain incidental consequences of the growing importance of war financeering. It fosters the betting or gambling instincts on a vast scale and introduces an element of recklessness into state finance that should be alien to such serious interests. It encourages a combatant to take unwarranted risks in the hope that having once committed the money market of a certain nation to its side, it may count on almost unlimited support, on the principle that a new investment will be called for to make the old one good. The temptation to intrigue and misrepresentation opened up by such a condition is appalling. Let it once be fully realized that the outcome of a war depends not entirely upon the conduct of troops on the field of battle, but to a large extent upon the impression made upon the French, British, or American investor, the neutral money market will be fought over with all the intrigue and corruption that only a grave national crisis can impel. No means will be shunned to gain control of the press and to influence important financial agencies. The full possibilities of such machinations only a great future war will reveal; though we have already had a taste of attempts artificially to mold public opinion in conflicts of recents years.

Considerations such as these have influenced the opinion of many publicists, who have condemned the practice of raising war loans in neutral countries. Bluntschli, Phillimore, and Calvo emphasize the thought that such loans are similar to direct subsidies or to the levy of auxiliaries, and therefore fall under the general principle prohibiting unfriendly acts. Kent makes the categorical statement that a loan of money to one of the belligerent parties is considered a violation of neutrality. Bluntschli and Calvo distinguish between loans publicly advertised and subscribed, which they consider inadmissible, and individual subscriptions of private citizens, for which the neutral government should not be held responsible under its duty toward belligerents. Bluntschli follows out the analogy to a levy of troops by stating that individual volunteer service or individual loans are permissible and that government responsibility covers only public levies of troops and public subscriptions of money. This analogy had already been pointed out by Vattel. Pillet and M. Kleen follow these authorities in the principle that public emission and advertisement of a war loan should not be allowed by a neutral power. Strangely, the latter writer would permit loans of a commercial nature, based on considerations of credit and interest alone, even when made directly by the neutral state to a belligerent. This thought, which is found also in other writers who are in general opposed to neutral war loans, robs his general principle of practical value, as it would evidently be an easy matter to give any war loan the appearance of a commercial transaction.

While Bluntschli and Calvo dwell on the analogy of war loans to acts recognized as hostile in their nature, later writers, like M. Kleen and Politis, strive to show in what manner the government of a neutral state may actually be said to be itself responsible for war loans emitted in its territory. Kleen emphasizes the fact that it is the protection of the laws of a neutral state which afford belligerents an opportunity to acquire in full security the sinews of war; implying that such protection should not be accorded. Politis, too, states that it is the authority of the neutral governments which directly or indirectly protects all loans emitted. He holds that the advantage of using a national money market is rarely, if ever, *de facto* equal to

both belligerents. By opening the market at all, the neutral government therefore almost invariably favors one, at the expense of the other, belligerent. Politis also dwells on the importance of public advertising of loans in a neutral country, as attracting the ordinary investor, who would rarely send his money abroad to some foreign credit institution or agency. The case for government responsibility seems to him especially clear in countries where the listing of bonds on the exchange requires an official sanction, as is the case in Austria-Hungary, Russia, Spain, Portugal, and Turkey. In France, since 1880, the privilege of listing is granted by the Chambres Syndicales; but the Minister of Finance may disallow such listing and circulation of bonds. Westlake, who in general does not admit the responsibility of neutral governments in this matter, holds that "if by the law of a neutral state the consent of the executive is required to loans by individuals to foreign powers, or if the executive is in the habit of controlling such operations, a loan by individuals to a belligerent which is allowed to slip through the meshes will have an international character. But in a country where the loan market is free, such loans are as legitimate as ordinary commercial undertakings."

The attempt of Politis to connect the state specifically with responsibility for the issuance of loans is to my mind open to the objection that other pursuits, such as the manufacture of arms, could also not go on without the police protection of the state, and yet we do not hold the government responsible, as delinquent in its neutral duties, for permitting such manufacture and exportation. Nor could the fact that the laws of Austria-Hungary, for instance, require the governmental sanction for the listing of bonds be justly made a ground for holding that state responsible for permitting loans which may freely be raised in other neutral countries, provided, of course, that it shows no partiality to either of the contestants. For it would seem unjust that such a difference in municipal law should be allowed to affect unfavorably the international responsibilities of a given country.

A more fundamental and far-reaching principle than we have yet reviewed is that stated by Bulmerincq. It is to the effect that the subjects of a neutral state must make their actions during a war

conform entirely to the neutrality of their government. This principle has, in its essence, also been made the basis of the decision in the Supreme Court of the United States in the famous case of Kenneth v. Chambers, 14 Howard, 38 (1852). The case arose upon a contract between private parties, in which it was agreed to convey property in Texas in return for certain payments of money, and which contained the recital that the party of the second part was desirous of assisting General Chambers, the party of the first part, in raising, arming, and equipping volunteers for Texas, and of advancing the cause of freedom and independence of that State. The contract was made at a time when Texas was in rebellion against the Mexican Government and before its independence had been recognized by the United States. The Supreme Court held the contract illegal and void. Chief Justice Taney developed the basis of the decision in the following striking language:

The intercourse of this country with foreign nations, and its policy in regard to them, are placed by the Constitution of the United States in the hands of the Government, and its decisions upon these subjects are obligatory upon every citizen of the Union. He is bound to be at war with the nation against which the war-making power has declared war, and equally bound to commit no act of hostility against a nation with which the Government is in amity and friendship. This principle is universally acknowledged by the law of nations. It lies at the foundation of all governments, as there could be no social order or peaceful relations between the citizens of different countries without it. It is, however, more emphatically true in relation to citizens of the United States. For as the sovereignty resides in the people, every citizen is a portion of it, and is himself personally bound by the laws which the representatives of the sovereignty may pass, or the treaties into which they may enter, within the scope of their delegated authority. And when that authority has plighted its faith to another nation that there shall be peace and friendship between the citizens of the two countries, every citizen of the United States is equally and personally pledged. The compact is made by the department of the Government upon which he himself has agreed to confer the power. It is his own personal compact as a portion of the sovereignty in whose behalf it is made. And he can do no act, nor enter into any agreement, to promote or encourage revolt or hostilities against the territories of a country with which our Govern-

ment is pledged by treaty to be at peace, without a breach of his duty as a citizen, and the breach of the faith pledged to the foreign nation. And if he does so he can not claim the aid of a court of justice to enforce it. The appellants say, in their contract, that they were induced to advance the money by the desire to promote the cause of freedom. But our own freedom can not be preserved without obedience to our own laws, nor social order preserved if the judicial branch of the Government countenanced and sustained contracts made in violation of the duties which the law imposes, or in contravention of the known and established policy of the political department, acting within the limits of its constitutional power.

A similar state of facts was involved in the English case of DeWutz v. Hendricks, 9 Moore, 586 (C. P. 1824). In his decision, Lord Chief Justice Best (later Lord Wynford) said, by way of *obiter dictum:*

I then thought that it was contrary to the law of nations for persons residing in this country to enter into engagements to raise money, by way of loan, for the purpose of supporting subjects of a foreign state in arms against a government in alliance with our own; and that no right of action could arise out of such a transaction. * * * A case in circumstances precisely similar to the present, except that a different loan was proposed to be raised, was lately decided in the Court of Chancery in which the Lord Chancellor entertained the same opinion as myself, and in which he is stated to have said that English courts of justice will not take notice of, or afford any assistance to, persons who set about raising loans for subjects of the King of Spain to enable them to prosecute a war against that sovereign; or, at all events, that such loans could not be raised without the license of the Crown.

These cases involving the identification of the citizen's action and responsibility with that of the state are indeed of the greatest importance in the theory and practice of international law. The decision of Kenneth v. Chambers is especially noteworthy for its elevated conception of private duty in international matters. It is true to the high demands which the republican form of government makes upon its citizens, and it foreshadows the era when the people of republican states will be fully permeated with a sense of their international responsibilities. But it must be noted that as legal precedents these cases relate merely to loans in favor of insurgent or

rebellious governments. As has been pointed out by Westlake, the question of neutral duties is entirely foreign to such loans to insurgents. In such cases there is only one friendly power involved — the government against which the insurrection is operating. Moreover, the loans to insurgents can hardly be looked upon as regular and normal financial operations — the risk involved placing them *ab initio* in a class by themselves, as thoroughly speculative and presumably unsound ventures. In such cases the courts deal, of course, only with the status of the parties before them. They look upon their contracts as vitiated by the immoral character of the consideration, and refuse to lend their assistance in enforcing them. The action of the courts does not refer to any contingent responsibility of the neutral state itself, in damages, for the acts of individuals. A later English case (*ex parte* Chavasse *re* Gazebrook, 34 L. J., Bankruptcy Cases, 17) distinctly decides that "acts of individuals independent of, or unknown to, their government can not, in matters of loans, any more than in sales of munitions of war, be considered violations of neutrality."

Turning, now, to the opinions in opposition to the principle of holding a neutral state responsible for war loans furnished by its subjects, we find, as Rivier has noted, that international law doctrine is at present much laxer upon this point than formerly, due to the increasing importance of financial transactions between nations, both in peace and in war Among the notable authorities on international law at the present day there is no one who would go as far as the earlier writers in the assertion of state responsibility. The considerations which determine the opinions of most of these authorities is the impracticability of any prohibition. Funck-Brentano, Dupuis, Lawrence, Hall, Holland, Rivier, and Fiore all believe in essence that "money being a form of merchandise most easy to transfer, commercial transactions in it could not be prevented except by an amount of espionage and interference which would render all trade impossible. The attempted prohibition of such transactions would be successfully met by secret credit operations which would be entirely beyond the reach of the government." We may note in passing that this argument does not invalidate the demand for a prohibition of

public advertisement and subscription. Some of these writers admit that public issues might be forbidden. But they seem to undervalue the importance of publicity in such matters. While credit operations could, of course, be carried on quietly or secretly by individuals, and moneys could be sent to foreign agencies, it seems to me that, nevertheless, the belligerent borrower would be deprived of a very distinct advantage if the public advertising or subscription of a war loan in a neutral country should be forbidden.

Lawrence adduces the consideration that as money is contraband of war, the neutral trader in it therefore lends at his own risk. This position does not seem to be well founded. Wiegner, the latest writer on contraband, holds that, with the present conditions of financial operations, the contraband quality of money has lost its meaning. As these very writers dwell upon the secrecy of financial operations, the argument in connection with the contraband quality seems of very little force indeed. To my mind the very fact that money is so easily transmitted by means of exchange lends some strength to the demand for restriction of neutral loans. Against the importation of ordinary contraband articles into the country of his opponent a belligerent can to a certain extent defend himself — especially by capture on the sea, but he does not enjoy this advantage in the case of credit operations. If these are publicly conducted under the protesting ægis of a nominally friendly government, the situation may easily assume the character of a substantial breach of neutrality.

Hall, in general agreement with these other writers, bases his opinion upon the fact that the principle contended for would constitute " a solitary exception to the fundamental rule that states are not responsible for the commercial acts of their subjects. Money is a merchandise, the transmission of which would elude all supervision." The same position is taken by Fiore in his International Law Codified. He says:

A government can not be expected to suspend the operation of its internal laws, which may authorize the acceptance of military service abroad, commerce in arms and munitions, the emission of loans, the furnishing of subsidies, the formation of aid committees. It must, however, apply these laws in such a fashion as to avoid all serious presumption of favor shown by it to the actions or commercial opera-

tions of individuals at their own risk during the war. Nor may the neutral government in any way diminish the risk assumed by its subjects in such matters.

These writers argue that as long as a neutral state can not be held responsible for the commercial operations of its subjects, though they may consist in furnishing arms and munitions to the belligerents, it would be illogical and unreasonable to call upon a neutral state to prohibit other normal commercial transactions, such as the negotiation and issuance of loans. Nor can it be denied that there is a strong logical connection between these matters. Yet as the furnishing of funds is the ultimate source and root of all warlike activities, it does not stand entirely on the same footing as the sale of ordinary materials of war.

At its meetings in 1906 and 1907 the International Law Institute discussed this subject in connection with the general rights and duties of neutrals. The reporter, M. Kleen, framed his original project in accordance with his views, which we have already noted. These principles were criticised by Van den Beer Poortugael and Holland. The former denied the practicability of a distinction between commercial and war loans. He further suggested that the forbidding of public loans would lead to hypocrisy, as secret operations would still be permissible. The general principle he attacked by urging that it went too far. If neutral subjects can not lend money to a government at war, could they furnish it funds by purchasing a concession, or some other privilege? That, too, he holds, would have to be forbidden under such a principle. In his amended project, Kleen stated the rule of international law to be that "subjects of a neutral state may furnish any kind of loans to belligerents" — a statement which in effect expresses the present status of this matter in positive international law.

It remains for us to consider briefly the practice of states in the past as affecting war loans in neutral countries. In 1795 the Senate of Genoa refused its authorization for the raising of a French war loan in that city. It is, however, evident that the statement that its action was due to a desire to fulfill the duties of neutrality was a mere pretext and that the action rested entirely upon political

grounds. In 1823, when Don Miguel was engaged in rebellion against Dona Maria of Portugal, he succeeded in negotiating a loan of 40,000,000 francs in Paris. The French Government did not forbid the issuance of this loan, and though later it refused its diplomatic assistance in the recovery of payment from the Portuguese Government, it did not at any time visit the loan with its authoritative condemnation, nor were diplomatic representations made by Portugal with a view of holding the French Government responsible. In 1842, Mr. Webster, as Secretary of State, made the following striking statement in connection with Texan war loans:

As to advances and loans made by individuals to the Government of Texas or its citizens, the Mexican Government hardly needs to be informed that there is nothing unlawful in this as long as Texas is at peace with the United States, and that these are things which no government undertakes to restrain.

In 1823 the lawfulness of subscriptions for the benefit of the Greek revolutionists was submitted to the Crown lawyers of the British Government. The law officers held that "gratuitous subscriptions" by individuals of a neutral nation for the use of a belligerent state were inconsistent with neutrality and contrary to the law of nations, although they might not constitute a just ground of hostilities; but that "loans, if entered into merely with commercial views," would not be an infringement of neutrality, although if the "loan" was only a cover for a "gratuitous contribution" the transaction would constitute such an infringement. (Cited in Moore's Digest, Vol. VII, 976.) We may note in passing that public subscriptions for the assistance of a belligerent are generally frowned upon in theory as well as in practice. During the Spanish-American war, Uruguay interdicted the holding of theatrical performances for the purpose of raising money for the Spanish fleet, as well as the foundation of a Red Cross Society which was to lend succor to only Spanish soldiers. In France subscriptions in favor of Spain were, however, permitted at this time and no diplomatic representations were made by the United States. Calvo, Bluntschli, and other authorities specially except from prohibition subscriptions for the aid of wounded, etc. Politis has criticised this exception, holding that

if by such subscriptions a belligerent state is relieved of the cost of maintaining the sanitary service, it is to that extent subsidized toward warlike expenditure in other directions.

In 1854 a Russian war loan was negotiated by the house Steiglitz, of St. Petersburg. England and France entered objections against the issuance of this loan in Prussia and Holland. But while the Dutch exchanges refused to interest themselves in the loan, Prussia permitted her exchanges to take it up, and no attempt was made later to hold her responsible. In 1871, Gambetta raised the so-called Morgan loan of 250,000,000 francs in England for the benefit of France. During the same war the North German Confederation also negotiated a loan in Great Britain. Neither of the belligerents entered any objections. In 1873, a subscription was started in England in favor of the Carlist revolution in Spain. Mr. Gladstone, when questioned in Parliament, deprecated the subscription as virtually an unfriendly act, and appealed to a principle of the common law forbidding aid to a domestic enemy of a friendly power; nevertheless he refused to take any action in this particular matter, considering the offenses too unimportant to be punishable. In the Russian wars of 1878 and of 1904, war loans were freely placed in neutral countries, but no objection was made at any time. By readily taking advantage of neutral loans itself, a belligerent of course practically precludes his opportunity of making any representations against favors extended to his opponent.

The foregoing analysis of the doctrine and practice of international law in the matter of war loans in neutral countries leads to the following conclusions:

1. Under the present status of the law a neutral nation could not be held responsible by a belligerent for having allowed its subjects to make loans to the other party in the war.

2. The general desire of combatant powers to avail themselves of the opportunity to borrow money has in recent wars done away with the motive on the part of the belligerents to object to that practice.

3. The growing importance of international financial operations has rendered neutral powers reluctant to take a stand for the rule of responsibility.

4. Nevertheless, the public sense of justice has not been satisfied with the present practice, and there has been a distinct feeling that it is dangerous to the general interests of humanity.

5. Loans to insurgent juntas or governments have been visited with the condemnation of the courts.

6. This condemnation might be extended by the courts to war loans of any belligerent, so that such contracts would be vitiated as far as individuals are concerned.

7. Response to public sentiment might lead some neutral governments, as a matter of public policy, to forbid the public advertisement and issue of war loans.

8. All this would, however, not as yet establish the responsibility of the neutral state itself to answer in damages for the acts of its subjects. This could be brought about only if, after a particularly serious case of financial support to a belligerent, the offended party should be strong enough to obtain by treaty acknowledgment of such responsibility, followed by an arbitral award of damages as in the case of the *Alabama* claims. Or if an international congress of plenipotentiaries, such as the Hague Conference, should feel itself impelled by a fully developed public opinion to agree upon a rule establishing such responsibility in future cases.

9. It must also be noted, however, that the credit of a nation may be looked upon as a national asset, which ought to be available to it in times of need. The international organization of credit, moreover, has features which favor the development of peaceful and stable conditions throughout the world. Unless, therefore, the evils which may be attendant upon war loans should manifest themselves in a particularly acute form, the practice may continue to be used for an indefinite time.

The CHAIRMAN (Mr. Straus). Is there any further discussion upon this subject? If so it will be welcomed. There are no more set addresses upon this branch of the subject, and so discussion is invited.

I am requested to call attention to the fact that many members have not registered, and all who have not done so I ask to do so at once. At the end of this session to-day the Executive Council is to

meet, so the gentlemen who compose the Executive Council will please remain. The evening session, as you will see from the program, is to be held in this room at eight o'clock. The subject is: "Arbitration at the Second Hague Conference." Judge George Gray will preside, and General Horace Porter, fresh from the Hague Conference, will speak, as will also Mr. R. C. Smith, of Montreal, Canada.

Is there any further discussion upon this topic? If there is, as I have stated, it will be welcome.

Mr. Henry Stockbridge, of Baltimore, Md. Mr. President: There is one phase of the subject under consideration which has not been fully developed in the extremely interesting paper to which we have just listened, and in regard to which it seems pertinent to direct attention for just a moment.

Recent writers have inclined strongly toward the view of regarding money as a commodity dealt in by bankers, whether in time of war or in time of peace, and that the making of a loan by bankers of neutral states to a belligerent power in time of war was a dealing by this class of persons in a commodity. This attitude is recognized in the paper which has just been read. Money belonging to a belligerent is recognized as contraband, and liable to capture as such by the other belligerent, even if that money has been obtained by way of a loan from the subjects or citizens of neutral states. But the present proposition goes beyond that. It looks to treating the making of such loan by the neutral banker as an act violative of the neutrality of the state of which the banker making the loan is a subject or citizen, or if not an actual violation of neutrality, at least to classifying it as an unfriendly act.

Such a proposition appears to me subversive of the neutral rights for which the contest has been persistently waged for a long time, and which is now just beginning to receive its proper recognition. The doctrine of neutral rights in time of war which this country has claimed for its citizens — and the British view is practically the same — is that the occurrence of a state of belligerency between two or more powers should operate to interfere as little as possible with the commerce of neutrals with either or both of the belligerents, or, if it must interfere, that such interference shall be the smallest possible amount. For more than a century this is the principle for

which the United States has contended, and the acquiescence in this view has gradually been extended more and more.

If, now, we are to adopt the view that the loan of money by a banker or syndicate of bankers to a belligerent power is a violation of the neutrality or an unfriendly act upon the part of the neutral state to which the banker belongs, we at once begin a retrograde movement, so far as the rights of neutrals are concerned. If the making of such loans is to be regarded as a violation of neutrality, the effect is of course to commence limiting the rights of neutrals to engage in commerce with the belligerents. It is the entering wedge in this direction, and will of course be followed by limitations on other forms of commerce. Another equally natural limitation would be upon the furnishing by a firm or private corporation of a neutral state to either belligerent of arms or munitions of war (cartridges, for example); this would in turn be followed by an inhibition upon articles of food, since they might be applied to the use of the armed forces; then the manufactures of cloth and clothing for a like reason; electrical and railway supplies, fuel, and so on through a long list, which it is not necessary to further elaborate. Each of these would be just as proper a limitation on the commerce of neutrals as the limitation upon the bankers. The same arguments which are available to support the one are equally applicable to each of the others. Thus, the whole tendency of the proposition is to set at naught the essential rights of the citizens of neutral powers, rights which for so many years the most enlightened nations of the world have been striving to bring to complete realization. May we not well hesitate, both as a nation and as individuals, before we give our adhesion to so reactionary a doctrine?

I do not wish to consume the time of this body, but only to call attention to the fact that there are two sides to the question under consideration, which it will be wise to weigh with care before proclaiming an adoption of a theory which has so much of a backward tendency about it.

Mr. Crammond Kennedy, of Washington, D. C. Mr. President: It seems to me that we are under great obligations for the thoughtful and suggestive paper that has been read to us, and I think that we must all agree that the principle laid down by the Supreme Court of

the United States in the case of Kenneth v. Chambers is the only one that is consistent with international good faith and duty. It seems to me that as a rule it is the most presumptuous thing conceivable for a private individual to take an active part in a war against a country with which his own government is at peace.

Referring to the remarks that have been made by the gentleman who has just taken his seat, while it is true that there is a great deal of force, and especially from a commercial point of view, in the theory that belligerents ought not to be allowed to interfere with the free exchange of goods any further than possible, nevertheless there must be a consciousness that the supply of munitions of war and even of the means of sustaining armies, provender for the horses and provisions for the men, by subjects of so-called "neutral powers" — I say there must be a deep-seated consciousness that that is not neutrality; that it is not impartiality; that it is substantially interference and taking part with one of the belligerent parties. Why, if it were otherwise, should those cargoes of munitions, or provisions, the title to which is unquestioned in the private owner, be subject to confiscation if captured? If the thing were right, the property could not be taken away from the private individual without the grossest kind of a wrong. Capture and condemnation must be regarded as a penalty.

But I must beware not to get involved in any long argument. I merely wanted to point out what seems to me a modern instance of the most lawless kind of interference — I mean the operations of the late Cuban Junta. I do not believe that we have ever realized in this country what serious wrongs, what breaches of neutrality, were perpetrated — I mean for which the Government might have been fairly held responsible to Spain upon the principles applied in the Geneva arbitration.

There were hundreds of people born and reared under the allegiance of Spain who deliberately became citizens of the United States for the purpose of plotting in their adopted country against their original sovereign in violation of our neutrality laws. Let me give you an illustration. The man who afterwards became President of the so-called Cuban Republic raised funds, when he was a citizen of the United States, in aid of the insurrection in Cuba against Spain,

by going to other citizens of the United States in the city of New York and saying to them: "If you do not give me two thousand dollars, five thousand dollars, ten thousand dollars, or twenty thousand dollars, according to the value of your plantations or sugar works in Cuba, the insurgents will burn them." Now, think of that! That was done under the ægis of an acquired citizenship of the United States against the private personal rights of property of other citizens to the manner born, as well as in violation of the neutrality laws of their common country. When we remember that the United States was honeycombed with agencies of the Cuban Junta, which not only raised money but spent that money in organizing and equipping expeditions, the sale of the *Alabama* seems almost venial as an offense against international law; for here expeditions were organized, including men enlisted in the United States, that carried not only munitions of war to Cuba to help destroy, or to drive her out of that particular part of her dominion, a nation with whom we were at peace, but also soldiers to increase the forces operating against her, the military forces in the field.

Now, I say that the international conscience throughout the world should be so written into the public law, and should be so reinforced by new regulations in this behalf, that the rule should prevail that every man is a friend of that nation with which his government is at peace and amity, as every man is to be considered hostile to that country with which his government is at war.

Mr. CHARLES N. GREGORY, of Iowa City, Iowa. Mr. President: I do not wish to rank myself at all as opposed to any influence which shall promote peace, but it has seemed to me that the ability to freely negotiate loans tended to the equality of men in ordinary society, and that the same freedom to negotiate loans tends to the equality of governments, even in time of war, and that therefore the rigid rule which forbade assistance to another country in time of war would tend to give an undue continuous predominance to the nation which happened to be well supplied with cash.

I think that consideration ought not to be lost track of in the consideration of this matter.

The CHAIRMAN (Mr. Straus). If there is no further discussion of this topic, the Chair will declare the session closed.